

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KARL P. ANDERSON,

Plaintiff,

v.

**CIVIL ACTION NO. 5:09cv117
(Judge Stamp)**

**ADMINISTRATOR SPENCER,
SGT. GORBIE, C/O TRAVIS MONTAG,
C/O BALASFORD, C/O CLYDE HASLEM
AND C/O AARON STUCKEY,**

Defendants,

REPORT AND RECOMMENDATION

The *pro se* plaintiff initiated this case on October 29, 2009, by filing a civil rights complaint against the above-named defendants pursuant to 42 U.S.C. § 1983. The plaintiff's complaint alleges the use of excessive force against him at the Northern Regional Jail on June 1, 2008, August 31, 2008, and September 9, 2008. On November 2, 2009, the plaintiff was granted permission to proceed as a pauper and assessed an initial partial filing fee. [Dckt. 7]. The plaintiff paid the initial partial filing fee on March 5, 2010. [Dckt. 15].

On March 17, 2010, the undersigned conducted a preliminary review of the file and determined that summary dismissal was not appropriate at that time. [Dckt. 17]. Twenty-one (21) day summonses were issued that same day. [Dckt. 18]. The summonses were returned executed on March 29, 2010 as to all the defendants except Travis Montag. [Dckts. 22-27]. On April 9, 2010, all of the defendants, including Montag, filed an answer through Chad M. Cardinal, Esq., General Counsel for the West Virginia Regional Jail and Correctional Facility Authority. [Dckt. 28]. On April 20, 2010, the

undersigned issued a First Order and Notice Regarding Discovery and Scheduling. [Dckt. 30].

On December 1, 2010, Keith G. Gamble and Kenneth L. Hooper of the Morgantown, West Virginia office of Pullin, Fowler, Flanagan, Brown & Poe, PLLC entered their Notice of Appearance on behalf of all the defendants.[Dckt. 51]. As well, said attorneys filed a Motion to Continue and/or Modify the Scheduling Order. [Dckt. 52]. On December 7, 2010, the undersigned entered an Order granting the defendants' Motion for an Extension of Time to Conduct Discovery and setting forth amended scheduling deadlines. [Dckt. 55]. On December 9, 2010, Andrew S. Woods, who is duly licensed to practice in the United States District Court for the Northern District of West Virginia and is also a member of the Morgantown office of Pullin, Fowler, Flanagan, Brown, & Poe, PLLC entered his Notice of Appearance on behalf of the defendants. [Dckt. 56].

On February 1, 2011, Drew S. Woods and Kenneth L. Hopper filed a Motion to Withdraw Chad M. Cardinal as counsel for the defendants. [Dckt. 61]. On February 7, 2011, the Honorable Frederick P. Stamp granted said motion. [Dckt. 62]

On March 30, 2011, the defendants, through counsel, filed a Motion to Continue the Deadline for Discovery and Dispositive Motions. [Dckt. 76]. On April 6, 2011, the undersigned entered an Order granting said Motion. [Dckt. 77]. Pursuant to that Order the scheduling deadlines were extended such that Dispositive Motions were due on or before July 6, 2011.

A review of the file as of this date, indicates that no dispositive motions have been filed, and no Motion has been filed requesting an extension of time within which to file such motions.

In consideration of the foregoing, the undersigned hereby **RECOMMENDS** that this matter be set for trial before the Honorable Frederick P. Stamp.

Within fourteen (14) days after being served with a copy of this report and recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of such objections should also be submitted to the Honorable Frederick P. Stamp, Jr., United States District Court. Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation Failure to timely file objections to the Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk of the Court is directed to mail a copy of of this Report and Recommendation to the *pro se* plaintiff by certified mail, return receipt requested, to his last known address as reflected on the docket sheet. The Clerk is further directed to provide a copy of this Report and Recommendation to any counsel of record as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: July 22, 2011

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE